

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

SUMMONS FOR JUDGMENT NO.154 OF 2007
IN
SUMMARY SUIT NO.3254 OF 2006

Shrinivas Keshav Joshi
Prop. Of Dnyansagar Litho Press ..Plaintiff.
Vs.

Kulbhushan Gupta ..Defendant.

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Mr. K. K. Tated for the Plaintiff.
Mr. S.R. Saudagar for the Defendant.

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CORAM: DR. D.Y. CHANDRACHUD, J.

5th June, 2007.

P.C. :

1. The Defendant was producing a motion picture and by a letter dated 11th October, 2003 an order was placed with the Plaintiff for printing of publicity material. On 15th October, 2003 the Defendant addressed a communication to the Plaintiff confirming that an amount of Rs.22,74,718/- was due and payable of which arrangements had been made to pay an amount of Rs.17,74,718/- to the Plaintiff either directly by the Defendant or through other distributors. An amount of Rs.2,29,822/- was received by the Plaintiff

(details whereof are contained in a statement of account of the Plaintiff annexed to the affidavit in reply filed by the Defendant). In addition a further amount of Rs.2,70,178/- was received by the Plaintiff (details of which have been furnished in the Plaintiff's statement dated 24th August, 2004). The Plaintiff therefore received an amount of Rs. 5 lacs as against a total claim of Rs.22,74,718/-.

2. At the hearing of the Summons for Judgment two defences have been urged. Firstly, it has been submitted that the liability to pay was not of the Defendant but of the distributors to whom material was to be supplied by the Plaintiff. There is no merit in the defence whatsoever. The order dated 11th October, 2003 was placed by the Defendant upon the Plaintiff and the liability to pay rested with the Defendant. The second defence that was urged was that there was no publicity material delivered to the distributors for the territory of C.P. Berar and Tamil Nadu. The communication dated 15th October, 2003 of the Defendant shows that the value of the material to be supplied to the territory of C.P. Berar was Rs.2 lacs. Counsel appearing for the Defendant states on instructions that the value of

the material to be supplied to the distributors in Tamil Nadu was negligible. Hence, even if the aforesaid amount of Rs.2 lacs representing the value of the publicity material to be supplied to the territory of C.P. Berar is to be excluded from consideration, the fact remains that a balance of Rs.15.74 lacs approximately was still due and payable.

At the hearing counsel appearing for the Defendant submitted that the claim of the Plaintiff would not, according to the Defendant be in excess of an amount of Rs.6,84,000/-.

In my view, having regard to the circumstances of the case, it would be appropriate and proper if the Defendant is granted leave to defend the Suit. However, the grant of leave to defend in the facts of this case will have to be subject to a condition of deposit having regard to the Defendant's letter dated 15th October, 2003 under which the Defendant had acknowledged the amount of outstandings due and payable to the Plaintiff. Accordingly leave to defend the suit is granted to the Defendant subject to the deposit of an amount of Rs.8

lacs within a period of two months from today. Upon deposit of the amount the Plaintiff would be at liberty to withdraw an amount of Rs.6,84,000/- subject to furnishing security to the satisfaction of the Prothonotary and Senior Master. The balance of the amount shall be invested in a fixed deposit of a nationalized bank to be renewed periodically during the pendency of the suit.